

## § 4290.430

### **§ 4290.430 Notification of transactions that may change ownership or Control.**

You must promptly notify the Secretary as soon as you have knowledge of transactions or events that may result in a transfer of Control or ownership of at least 10 percent of your Regulatory Capital. If the effect of a particular transaction or event is unclear, you must report all pertinent facts to the Secretary.

### **§ 4290.440 Standards governing prior approval for a proposed transfer of Control.**

The Secretary's approval of a proposed transfer of Control is contingent upon full disclosure of the real parties in interest, the source of funds for the new owners' interest, and other data requested by the Secretary. As a condition of approving a proposed transfer of control, the Secretary may:

- (a) Require an increase in your Regulatory Capital;
- (b) Require the new owners or the transferee's Control Person(s) to assume, in writing, personal liability for your Leverage, effective only in the event of their direct or indirect participation in any transfer of Control not approved by the Secretary; or
- (c) Require compliance with any other conditions set by the Secretary, including compliance with the requirements for minimum capital and management-ownership diversity in effect at such time for new RBICs.

### **§ 4290.450 Notification of pledge of RBIC's shares.**

(a) You must notify the Secretary in writing, within 30 calendar days, of the terms of any transaction in which:

- (1) Any Person, or group of Persons acting in concert, pledges shares of your stock (or equivalent ownership interests) as collateral for indebtedness; and
  - (2) The shares pledged constitute at least 10 percent of your Regulatory Capital.
- (b) If the transaction creates a change of ownership or Control, you must comply with § 4290.400 or § 4290.410, as appropriate.

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### **RESTRICTIONS ON COMMON CONTROL OR OWNERSHIP OF TWO OR MORE RBICs**

#### **§ 4290.460 Restrictions on Common Control or ownership of two (or more) RBICs.**

Without the Secretary's prior written approval, you must not have an officer, director, manager, Control Person, or owner (with a direct or indirect ownership interest of at least 10 percent) who is also:

- (a) An officer, director, manager, Control Person, or owner (with a direct or indirect ownership interest of at least 10 percent) of another RBIC; or
- (b) An officer or director of any Person that directly or indirectly controls, or is controlled by, or is under Common Control with, another RBIC.

### **CHANGE IN STRUCTURE OF RBIC**

#### **§ 4290.470 Prior approval of merger, consolidation, or reorganization of RBIC.**

You may not merge, consolidate, change form of organization (corporation, limited liability company, or limited partnership) or reorganize without the Secretary's prior written approval. Any such merger, consolidation, or change of form is subject to § 4290.440.

#### **§ 4290.480 Prior approval of changes to RBIC's business plan.**

Without the Secretary's prior written approval, no change in your business plan, upon which you were selected and licensed as a RBIC, may take effect.

## **Subpart G—Managing the Operations of a RBIC**

### **GENERAL REQUIREMENTS**

#### **§ 4290.500 Lawful operations under the Act.**

You must engage only in the activities permitted by the Act and in no other activities.

#### **§ 4290.502 Representations to the public.**

You may not represent or imply to anyone that the Secretary, the U.S. Government, or any of its agencies or officers has approved any ownership interests you have issued, obligations

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you have incurred, or Financings you have made. You must include a statement to this effect in any solicitation provided to investors. Example: You may not represent or imply that "USDA stands behind the RBIC" or that "Your capital is safe because the Secretary's experts review proposed investments to make sure they are safe for the RBIC."

### § 4290.503 RBIC's adoption of an approved valuation policy.

(a) *Valuation guidelines.* You must prepare, document and report the valuations of your Loans and Investments in accordance with the Valuation Guidelines for SBICs issued by SBA. These guidelines may be obtained from SBA's Investment Division or at <http://www.sba.gov/INV/valuation.pdf>.

(b) *The Secretary's approval of valuation policy.* You must have a written valuation policy approved by the Secretary for use in determining the value of your Loans and Investments. You must either:

(1) Adopt without change the model valuation policy set forth in section III of the Valuation Guidelines for SBICs; or

(2) Obtain the Secretary's prior written approval of an alternative valuation policy.

(c) *Responsibility for valuations.* Your board of directors, managing member(s), or general partner(s) will be solely responsible for adopting your valuation policy and for using it to prepare valuations of your Loans and Investments for submission to the Secretary. If the Secretary reasonably believes that your valuations, individually or in the aggregate, are materially misstated, he or she reserves the right to require you to engage, at your expense, an independent third party acceptable to the Secretary to substantiate the valuations.

(d) *Frequency of valuations.* (1) You must value your Loans and Investments at the end of the second quarter of your fiscal year, and again at the end of your fiscal year.

(2) On a case-by-case basis, the Secretary may require you to perform valuations more frequently.

(3) You must report material adverse changes in valuations at least quar-

terly, within 30 days following the close of the quarter.

(e) *Review of valuations by independent public accountant.* (1) For valuations performed as of the end of your fiscal year, your independent public accountant must review your valuation procedures and the implementation of such procedures, including adequacy of documentation.

(2) The independent public accountant's report on your audited annual financial statements (SBA Form 468) must include a statement that your valuations were prepared in accordance with your approved valuation policy.

### § 4290.504 Equipment and office requirements.

(a) *Computer capability.* You must have a personal computer with access to the Internet and be able to use this equipment to prepare reports, for which you will receive the necessary software, and transmit such reports to the Secretary. In addition, you must have the capability to send and receive electronic mail.

(b) *Facsimile capability.* You must be able to receive facsimile messages 24 hours per day at your primary office.

(c) *Accessible office.* You must maintain an office that is convenient to the public and is open for business during normal working hours.

### § 4290.506 Safeguarding the RBIC's assets/Internal controls.

You must adopt a plan to safeguard your assets and monitor the reliability of your financial data, personnel, Portfolio, funds and equipment. You must provide your bank and custodian with a certified copy of your resolution or other formal document describing your control procedures.

### § 4290.507 Violations based on false filings and nonperformance of agreements with the Secretary or SBA.

The following shall constitute a violation of this part:

(a) *Nonperformance.* Failure to perform any of the requirements of any Debenture or of any written agreement with the Secretary or SBA.

(b) *False statement.* In any document submitted to the Secretary or SBA: